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Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

* * *

NORMAN TYRONE

PETITIONER

V

UNITED STATES OF AMERICA

RESPONDENT

* * *

PETITION FOR WRIT CERTIORARI

TO THE UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

NO. CA 71-1657

* * *

AMACHER & STONE
9050 Telegraph Road
Downey, California 90240

ATTORNEYS FOR PETITIONER, NORMAN TYRONE

SUPREME COURT OF THE UNITED STATES

* * *

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* * *

I.

The within Petition is sought to review the opinion of the United States Court of Appeal for the Ninth Circuit filed on November 5, 1971 and as yet unreported, and a subsequent order denying Petitioner's Petition for rehearing filed on December 29, 1971. True and exact copies of each such order is appended hereto and marked as Exhibits "A" and "B" respectively.

II.

GROUNDS OF JURISDICTION

The judgment sought to be reviewed was entered in the court of Appeals for the Ninth Circuit on November 5, 1971 and on December 29, 1971, the District Court of Appeals for the Ninth Circuit entered its order denying the Petitioner's Petition for rehearing. The within Petition is sought under the provisions of rule 19B of the Rules of the Supreme Court.

III.

QUESTIONS PRESENTED FOR REVIEW

A. Upon the review of a case tried without a jury;

1. Must the Defendant renew his motion for acquittal at the close of all the evidence in order to preserve the question of the sufficiency of the evidence?

2. What is the quantum of evidence required to sustain a conviction?

3. Does a Defendant in a criminal case waive error in the denial of a motion for acquittal at the close of the government's case by proceeding with his defense?

B. Upon review of a conviction for prejury

1. Is the "Two-Witness Rule" satisfied by the testimony of one prosecution witness plus circumstancial evidence if that witness is impeached by a second government witness?

2. Must the government prove the falsity of each statement contained in a single count of an indictement?

3. Must the government prove that the conclusionary pleading contained in an indictment is true?

4. Is an indictment based upon the government's assertion of the accused's beliefs, as distinguised from the accused's statements constitutionally valid?

IV.

APPLICABLE, CONSTITUTIONAL, AND STATUTORY PROVISIONS

A. United States Constitution, Sixth Amendment, "In all criminal proceedings, the accused shall enjoy the right to a speedy public trial, by an impartial jury . . . informed of the nature and cause of the accusation; to be confronted with the witnesses against him;

B. United States Constitution, Fifth Amendment, " . . . nor be deprived of life, liberty, or property, without due process of law; . . . nor shall any person be subject for the same offense to be twice put in jepordy or limb; . . ."

C. United States Code Annotated, Rules of Civil Procedure, Rule 29. . . "The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed

if the evidence is sufficient to sustain a conviction of such offense or offenses." If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right."

V.

STATEMENT OF THE CASE

1. THE CHARGE; Petitioner was charged by indictment with three counts of violation of 18 U.S. Code, Section 1621, Perjury. Each count of the indictment contained a series of questions presented to the Defendant and his answers which he gave under oath before a grand jury, sitting in the city of Reno, in the state of Nevada. Each count of the indictment states in a conclusionary paragraph as a matter of fact the knowlege of the Defendant at the time of his testimony and the conclusion that the defendant testified falsely.

The first count concludes as follows; "And such testimony was false and contrary to the oath taken by NORMAN TYRONE as he then well knew and believed that he had discussed with representatives of Pacific Bridge Company and Associates that Teamster Pension Fund loans cost ten per cent or more and that the money which might be loaned to the computer statistical company was discussed in relation to the percentage which had to be paid for a Pension Fund loan."

The second count concludes as follows; "And such testimony was false and contrary to the oath taken by NORMAN TYRONE as he then well knew and believed that the loan or investment in a mortgage computer service which he had discussed with representatives of Pacific Bridge Company and Associates was discussed as a condition securing a loan;

from the Pension Fund, upon which the granting of the Pension Fund loan would be dependent and that this was not . . . ..a side business, having nothing to do with the Pension Fund." A true and exact copy of the indictment is appended hereto and marked Exhibit "C".

2. THE TRIAL; Petitioner waived trial by jury and was tried by the honorable Bruce R. Thompson in the United States District Court for the District of Nevada. At the trial, the entirety of the transcript of Petitioner's testimony before the Grand Jury in Reno, Nevada on March 25, 1970 was received in evidence as Peoples Exhibit "1". No portion of said transcript was read into the evidence, nor was any portion of said transcript referred to by the trial judge.

Prior to the introduction of evidence, Petitioner's counsel moved for the consolidation of the three counts of the indictment into a single count on the grounds that one crime was alleged, and further, for dismissal because an unintelligibility . This motion was denied.

The jist of the government's case consisted of a conversation in a hotel room in Chicago during a half-hour meeting between the two of the government's witnesses Mr. Swigert and Mr. Farella and the Petitioner. The purpose of the meeting was to conclude a 2.2 million dollar loan from the Central States Pension Fund to a partnership composed of Mr. Swigert and two others. Mr. Farella was counsel for

that partnership at the time.

It was alleged that during that meeting, the Petitioner presented the witnesses with a document which allegedly expressed the intension of the partnership to loan a sum of money to a mortgage computer service. Upon reading the document, Mr. Swigert testified that he asked the Petitioner the meaning of the document and the Petitoner replied, "You know all these deals cost at least 10 points". Mr, Swigert testified further that the Petitioner said that the Teamster Loan was conditioned upon the granting of the loan to the computer company by the witnesses partnership.

Mr. Farella testified that he read the alleged letter of commitment and that the Petitioner stated "You know all these deals cost 10 points" but that the Petitioner never stated that the Teamster loan was conditioned upon the loan to the computer service. Mr. Farella further testified that he concluded that the two loans were interdependent.

The witnesses testified that they decided to consult the other partners, that they did not consult the other partners, and that they informed the Petitioner that they no longer desired to proceed with the loan application.

The government further put on evidence which indicated that the loan was subsequently approved by the Central States Pension Fund, that the partnership sold the property subject of the loan to third parties and that the purchasers of the said property utilized the Pension Fund loan.

The government also produced Mr. DeFoe, a deputy U.S. attorney. Mr. DeFoe testified that he was responsible for a Grand Jury investigation looking into violation of several statutes pertaining to wire fraud, mail fraud, and falsification of Pension Fund records. Mr. DeFoe further testified that the Petitioner testified before the Grand Jury without the presence of counsel and that he, Mr. DeFoe, informed the Petitioner of the nature of the Grand Jury's quest. At the close of the government's case, the Appellant moved for acquittal and argued that there was not a sufficient showing that the subject matter of the allegedly perjurious statements was material to the questions presented to the Grand Jury for investigation. The court granted the Petitioner's motion as to Count III of the indictment and denied the motion as to Counts I and II.

In his own defense, the Petitioner presented evidence which established that he had been soliciting funds for the computer statisical company over a period of years. Further, that he knew that financing such as the witnesses were seeking could very well exceed 10 per cent in cost in that the various elements of financing costs which borrowers such as the witnesses inevitably faced were quite expensive. However, he testified that he did not state that the Central States Pension Fund loans cost 10 per cent or more. Further, he denied stating that the loan to the computer company was in any way related to the Pension Fund loan. Mr. Tyrone testified

further that the loan which he was negotiating in Chicago with the witnesses was subsequently cultimated and that there was pending at the time of the trial in the Superior Court of the State of California a lawsuit commenced by him against the partnership to revover the commission due for the procurement of said loan, and that the witnesses had never accused the Petitioner of any wrong-doing prior to the institution of the aforementioned civil suit.

Further Mr. Tyrone testified that the refusal of the partners to proceed with the loan transaction was due to a request by the Pension Fund that the individual partners guaranteed the loan.

After resting, the Petitioner did not renew his motion for acquittal.

The court found the Petitioner guilty of Counts I and II, imposed a find of $2,000.00 on each count, and placed the Petitioner on three years probation.

In commenting upon the evidence, the court indicated that it found Mr. Tyrone's assertion that the personal liability of a partner in addition to the partnership liability increadable in that it was legally redundent. The court further concluded that in that the Petitioner's testimony was questionable in this regard it was suspect in others and hence, the credibility of the prosecution witnesses was enhanced.

3. ISSUES RAISED UPON APPEAL BY PETITIONER

QUESTION 1; Are there separate counts alleged in the indictment?

QUESTION 2; Should the court have granted appellants motion for acquittal for failure to prove the materiality of the alleged false statements to the matter under investigation by the Grand Jury?

QUESTION 3; Notwithstanding the fact that the Appellant went forward with his case, is he still entitled to the benefits of section 29 (a) rules of criminal procedure, and if so should the Appellate Court properly restrict its review to the evidence produced by the government?

QUESTION 4; Did the United States prove the statements false by clear and convincing evidence beyond a reasonable doubt?

QUESTION 5; Considering the motion for acquittal as being renewed at the close of the government's case, should the Appellant have been acquited?

4. RULING ON APPEAL

The Appealate Court in affirming the conviction made findings only on the issue of the seperability of the several counts, and the material of the allegedly perjurious statements to the subject matter of the investigation. In each instance the court did not indicate the standard or quantum of evidence it was baseing its holdings upon, nor did

the court rule on the issue of waiver by proceeding with the evidence. This latter point was raised and argued by the U.S. attorney in the BRIEF FOR APPELLEE. As to all of the issues raised by the Appealants Brief, other than seperablity and materiality the court merely ruled that those issues are so "completly without substance that they do not warrant discussion."

VI.

ARGUMENT

A. RE RULE 29, FEDERAL RULES OF PROCEDURE;

A review of the ruling on Defendant's motion for acquittal is essential in that the quantum of evidence applicable is higher than a mere review of a finding of guilty. Whereas, as a general rule an Appellate Court does not weigh evidence and will sustain a lower court's findings if there is any evidence supporting the findings, United States vs. Wright (CA Ga: 1970) 427 F. 2d 1179, there is a conflict as to the function of the Appellate Court if the Defendant has moved for acquittal under Rule 29 in a case tried without a jury.

1. THE NINTH CIRCUIT WAIVER RULE;

In the Ninth Circuit, a rule has evolved holding that upon an adverse ruling upon Defendant's motion for acquittal made at the close of the government's case, the Defendant waives any error in such ruling by putting on his defense, United States vs. Lewis (CA 9th) 426 F. 2d 266, 267; Benchwick vs. United States (CA 9th) 297 F. 2d 330, 335; Viramontes - Medina vs. United States (CA 9th) 411 F. 2d 981, the same rule has been applied in the following jurisdictions; Iowa, Kline vs. United States (1968) 395 F. 2d 138; Ohio, Costner vs. United States (1959) 271 F. 2d 261 cert. den. 80 S.Ct. 866, 362 U.S. 952, 4 L.E. 2d 870; Pennsylvania, United States vs. Manos (1965) 340 F. 2d 534.

Further, a second rule has evolved which holds that the Defendant waives the benefits of Rule 29 entirely unless he renews the motion at the close of all the evidence. Cases so holding include the following; O'Neil vs. United States (CA Ga. 1969) 411 F. 2d 13, Haill vs. United States (CA Neb. 1967) 384 F. 2d 675, cert. den. 88 S.Ct. 1203, 390 US 998, 20 L.Ed. 2d 97; United States vs. Broadnux (CA Mich. 1965) 346 F. 2d 119, cert. den. 86 S.C. 539 382 U.S. 974, 15 L.Ed. 2d 446; Rodd vs. United States (CA Minn. 1965) 340 F. 2d 506.

2. The rule of Cephus vs. United States (CA D C 1963) 324 F. 2d 893 is in direct conflict with the waiver doctorine set out above. In holding that there is no waiver by putting on a defense, the court reasoned as follows;"The few decisions which elaborate on the waiver rule, attempt to justify it on the ground that the Defendant's loophole-plugging evidence renders harmless any error in the denial of the original motion, or that a Defendant who voluntarily introduces evidence is estopped from denial of its efficacy. These arguments do not meet the objection that the Defendant's willingness to ask for acquittal on the Government's evidence is not a willingness to gamble on a prediction that the jury or appellate court will find that evidence insufficient. Moreover, there is danger that under the waiver rule prosecutions may be pursued with inadequate evidence in the hope that Defendants will supply missing evidence. The rule seriously limits the right of the accused to have the prosec-

tion prove prima facie case before he is put to the defense". Cephus vs. United States 324 F. 2d 893 (1963), 896. The court traced the waiver rule to its origins in civil cases and pointed out that in a civil case, granting the motion at the close of the Plaintiff's case is purely discretionary with the court, whereas in a criminal case, if the prosecution has not made out a prima facie case, the Defendant is entitled to a favorable ruling as a matter of right. A similar reasoning was found in Lumetta vs. United States (CA Mo. 1966) 362 F. 2d 644, at footnote 2, page 646.

It is Petitioner's contention that to hold that he waived error in denial of his motion for acquittal by failing to rest his case without putting on evidence is in effect a denial of a fair trial and vitiates the purpose of the rule.

3. THE NEED TO RENEW THE MOTION;

A second line of cases requiring a renewal of the motion for acquittal at the conclusion of the trial likewise is not universally followed in the Federal courts. In United States vs. Besase (1967 CA Ohio) 373 F. 2d 120, the court reasoned as follows " Even without a motion for acquittal, in a nonjury trial, on a plea of not guilty, the sufficiency of the evidence to sustain a conviction should be reviewed as if there had been a formal motion for acquittal, (373 F. 2d 121)". Additional cases holding that the motion need not be renewed are as follows; United States vs. Hon (1962 CA Ind.) 306 F. 2d.52; Hall vs. United States (CA Tenn. 1960)

286 F. 2d 676, cert. den. 81 SC 1087, 366 US 910, 6 L. Ed. 236.

It is the Petitioner's position that the Appellate Court is required to review the trial courts ruling first disregarding the Defendant's evidence, and a second time considering the Defendant's evidence.

B. QUANTUM OF EVIDENCE;

As distinguished from the general rule holding that any evidence is sufficient to sustain a conviction, the test in ruling upon a motion for acquittal has been defined as follows; "a trial judge, in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, . . . a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concluded that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter." Curly vs. United States (1947) 160 F. 2d 229, 81 U.S. App. D.C. 389.

C. THE TWO WITNESS RULE

The cases are well settled that in order to obtain a conviction on a charge of perjury the prosecution must produce two independent witnesses, or one witness and corroborating circumstnaces, United States vs. Palese, CCA Del., 133 F 2d 600; Weiler vs. United States 65 S. Ct. 548, 328 U.S. 606. The rational behind the rule is based on the concept of fair play, in that one person should'nt be required to defend his freedom against the bare statement of another, 70 C.J. 2d, Perjury, 537.

In the case at bar the two principal witnesses are the partner and chief counsel of a partnership being sued by the Petitioner for a commission arising out of the transaction being investigated by the trubunal before which the Petiticner made the allegedly perjurious statements. It is Petitioner's contention that these two witnesses do not constitute independent witnesses. Further, it is Petitioner's contention that on the basic facts comprising the second count in the indictment the testimony on the two witnesses controdicts and in fact impeaches each other. Nor can the two witness rule be satisfied by reference to surrounding circumstances in the case at bar, for there were none. In fact subsequent events substantiates the Petitioner's contention that the two loans were not in fact interdependent.

D. ATTACK UPON THE INDICTMENT

Prior to the commencement of the trial the Petitioner moved the court for an order requiring the government to consoldiate the three counts into one count or elect one count upon which to proceed on the ground that the indictment is duplicitious and unintelligable as formed. This motion was denied by the trial court. Upon appeal the Appeallant (Petitioner herein) argued that by virtue of the dismissal of count III of the indictment, the court committed error in failing to dismiss counts I and II as well. Hence, the sufficiency of the indictment and its constitutionality were raised at the trial and appealate levels and the error manifest by the form of indictment is properly before this court.

A true and exact copy of the indictment is appended to the Petition and marked Exhibit "C".

Essentially an indictment must be drawn so that it informs the Defendant of the charges against Him, so that he may answer same, Further, a verdict rendered in the case must be a bar to further prosecution for the same offense. An indictment which fails to meet these standards is violative of the Fifth and Sixth Amendments to the United States Constitution, Beauchamp vs. United States 154 F 2d 413; Hagner vs. United States 285 U.S. 427, 52 S. Ct. 417, 76 L. Ed. 861; Wong Tai vs. United States 273 U.S. 77, 47 S. Ct. 300, 71 L. Ed. 545; Bowles vs. United States 319 F 2d 284 (5 Cir. United States vs. Cruikshank 92 U.S. 542

stated that in a perjury prosecution it is proper procedure for the indictment to allege the testimony of the Defendant and its falsity, if the fact of falsity necessarily proves the truth of the converse.

In the case at bar the Petitioner had to be prepared to prove that each of the statements attributed to him was true, and in addition that the conclusion of the government was false. Dispite the judgment of the trial court, it would be possible for the government to construct an entirely new indictment but of the same questions and answers utilized either with the addition of other statements given to the same Grand Jury, or for the government to lift additional statements from the transcript and construct a new indictment alleging the same conclusions as previoulsy alleged. We submitt that the form of indictment utilized deprived the Petitioner of his right to trial in that it did not fairly apprise him of the charges he had to meet nor will a conviction under the indictment constitute a bar to being twice prosecuted for the same offense.

WHEREFORE THE PETITIONER PRAYS that The Supreme Court of the United States issue its Writ to Certiorari to the United States Court of Appeal for the Ninth Circuit, and review the matters therein decided so that justice may be done.

AMACHER & STONE

BY _____
Morris Stone
Attorney for Petitioner

stated that in a perjury prosecution it is proper procedure for the indictment to allege the testimony of the defendant and its falsity; if the fact of falsity necessarily presupposes truth of the converse.

In the case at bar the government has to be prepared to prove that each of the statements attributed to him was true and in addition that the contention of the government was false. Dispite the judgment of the trial court, it would be possible for the government to construct an entirely new indictment out of the same questions and answers utilized either with the addition of other statements given on the same transcript or for the government to lift additional statements from the transcript and construct a new indictment alleging the same conclusions as previously alleged. We submit that the form of indictment utilized deprived the Petitioner of his right to trial in that it did not fairly apprise him of the charges he had to meet and, with a conviction under the indictment constitute a bar to being twice prosecuted for the same offense.

WHEREFORE THE PETITIONER PRAYS that the Supreme Court of the United States issue its Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit and review the matters therein decided so that justice may be done.

SAMUEL A. STONE.

By
Morris Stone
Attorney for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Appellee,* vs. NORMAN TYRONE, *Appellant.*	No. 71-1657

[November 5, 1971]

Appeal from the United States District Court
District of Nevada

Before: HAMLEY, HAMLIN and KILKENNY, Circuit Judges.

KILKENNY, Circuit Judge:

Appellant was indicted, tried and convicted in a court trial on two counts of a three count indictment charging violations of 18 U.S.C. § 1621 [perjury]. He appeals. We affirm.

Factual Background

Inasmuch as appellant's main points are: (1) that the two counts on which he was convicted charge only one crime, and (2) that the alleged perjured testimony was not material to the main issues before the grand jury, we feel that a skeleton statement of facts is sufficient.

Appellant, a mortgage or loan broker, was involved in negotiating a loan for Pacific Bridge Company (Pacific) from the Teamsters union pension fund (Teamsters) in connection with the development by Pacific of the Sierra-Tahoe Hotel and Casino at Lake Tahoe, Nevada. After the original manager of Pacific terminated his employment with that company, appellant continued the negotiations with the new manager, William Sweigert. In September, 1964, appellant met with Sweigert and Frank Farella, attorney for Pacific, in Chicago, in connection with the proposed loan.

Exhibit "A"
-19-

The evidence is undisputed that the grand jury, which returned the indictment, was investigating possible violations of federal law in connection with the development of the Sierra-Tahoe Hotel and Casino and its relationship to Teamsters, including mail and wire fraud and, as related thereto, potential illegal payments to trustees of the fund.

The substance of the falsity alleged in Count One is that appellant, while under oath before the grand jury, denied discussing with anyone, in connection with the Pacific application, that the cost of getting a loan from the Teamsters would be approximately 10%.

The main thrust of the charge alleged in Count Two is that appellant falsely denied that he stated that a loan by Pacific and associates to a mortgage computer service, which appellant was planning to organize, was a condition to the applicant's securing the loan from the Teamsters[1]

The relevant questions and answers before the grand jury are set forth verbatim in each count. We will not extend this opinion by here repeating them. For our purposes, the above summary is sufficient. The transcript of proceedings before the grand jury and the exhibits before the trial court make it clear that appellant was fully informed of the nature of the proceedings after being sworn and prior to testifying before the grand jury.

First Issue

Relying on *Gebhard v. United States*, 422 F.2d 281 (9th Cir. 1970), appellant argues that Counts One and Two[2] should have been consolidated and appellant charged with but one count of perjury. We do not agree. *Gebhard* recognizes that if a witness before a grand jury tells two separate and distinct lies, he may be prosecuted on a separate count for each lie. We quote from the opinion:

---

[1]The main thrust of Count Three, which was dismissed by the court at the close of the government's evidence, was that appellant falsely testified that he did not present to representatives of the applicant a letter of commitment, or other papers, obligating applicant to make a loan to appellant's proposed computer statistical company.

[2]Also Count Three.

> "Gebhard was charged with thirty-two counts of perjury. If he in fact told separate lies, each of which could have hindered the grand jury in its investigation, then he could properly be separately charged for each lie." [P. 289.]

The *Gebhard* court went on to hold that certain of the counts were based on mere repeating and rephrasing of the same question and reversed as to those counts. Here, we have no such problem. Each count charges perjury on a subject entirely separate and distinct from the other. Appellant's denial of discussing with anyone that the cost of the loan would be 10% or more, bore no relationship to his denial of making the statement that the loan to the mortgage computer service was a precondition to Pacific receiving the loan from Teamsters. A trier of the fact could well hold the appellant innocent on one and guilty on the other without creating any type of a conflict. This contention is groundless.

Second Issue

Here, appellant contends that his answers to the questions which led to the convictions under Counts One and Two were not material to the investigation then being conducted by the grand jury. He misconceives the law on the subject. Essentially, the same type of contention was resolved against appellant's contention in *Barnes v. United States*, 378 F.2d 646 (5th Cir. 1967), *cert. denied* 389 U.S. 917 (1967) and *Vitello v. United States*, 425 F.2d 416, 424 (9th Cir. 1970), *cert. denied* 400 U.S. 822 (1970). The only requirement is that the question be material to a subject of the grand jury inquiry. The evidence need not be material to the main issue. For that matter, it is not even necessary that the false statements actually impede the grand jury investigation. *Vitello v. United States*, *supra*, p. 424. We hold that all of the circumstances surrounding the proposed Sierra Tahoe loan negotiations were proper subjects of inquiry for the grand jury in connection with the alleged payoffs and the mail and wire fraud.

Other Contentions

Our careful examination of the entire record convinces us that appellant's other contentions: (1) that the evidence in the record does not support the convictions by "clear and convincing evidence"

Exhibit "A"

-21-

beyond a reasonable doubt, and (2) that the convictions on Counts One and Two should be set aside by reason of the court's dismissal of Count Three, are so completely without substance that they do not warrant discussion.

AFFIRMED.

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

FILED
DEC 29 1971
WM. B. LUCK, CLERK

UNITED STATES OF AMERICA,

Appellee,

v.

NORMAN TYRONE,

Appellant.

NO. 71-1657

Appeal from the United States District Court
District of Nevada

ORDER

Before: HAMLEY, HAMLIN and KILKENNY, Circuit Judges.

The Clerk is directed to file the petition for rehearing. The petition is denied.

7-1504

U.S. GOVERNMENT PRINTING OFFICE

Exhibit "B"

U. S. DISTRICT COURT
DISTRICT OF NEVADA
FILED

JUN - 1970

JOHN A. PORTER CLERK
BY: B. Segovia DEPUT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
Plaintiff,
v.
NORMAN TYRONE,
Defendant.

NO. CR-14-99 Crim.

INDICTMENT

[18 U.S.C. 1621: Perjury]

The Grand Jury Charges:

COUNT ONE

[18 USC 1621]

That prior and subsequent to March 25, 1970 there was pending before a competent tribunal, that is a Grand Jury duly empanelled and sworn by a District Court of the United States, a case in which the laws of the United States authorized an oath to be administered, that is an investigation of possible violations of federal law in connection with the development of the Sierra-Tahoe Hotel and Casino, Lake Tahoe, Nevada, during the years 1964 through 1966, including possible mail and interstate wire fraud upon the Central States, Southeast and Southwest Areas Pension Fund of the Teamsters' Union, Chicago, Illinois; prohibited payments or demands for prohibited payments to representatives of that Pension Fund to influence their action with respect to the granting of loans by said Fund; the causing of false records to be prepared

MDF:mj

and maintained by said Fund; and conspiracy to commit the above offenses during the years 1964 through 1966.

Further that on March 25, 1970 at Reno in the District of Nevada the defendant NORMAN TYRONE, having taken an oath to testify truly before that Grand Jury, did willfully and contrary to his oath state material matter which he did not believe to be true, in that in answer to questions by government counsel he testified as follows:

"Q Now, you have indicated that you have had some prior experience, prior that is to 1964 and 1965, with loans from the Pension Fund of the Teamsters Union in Chicago; is that correct?

A Yes. I had made several loans through them.

Q And you were aware, I take it, that the Fund usually required the posting of a one-percent standby fee, or earnest fee as well as an appraisal fee; is that correct?

A Yes.

Q Now, in your acquaintance with the practices of the Fund, were you aware of any other charges which the Fund usually imposed for a loan?

A No.

Q Have you ever heard from any source that during the period prior to 1966, that Fund loans generally cost a total of ten percent or more to the borrower rather than the stated total of one and a half percent?

A Well, of course, anybody that is in the news as much as they are, you hear all kinds of stories and rumors. I could match stories all day with stories I have heard. But I can tell you that

Mr. Clinton, who is really the watchdog of that Fund, there weren't any that went through that he knew about that were at five and ten percent.

Q All right. And there were none, to your knowledge, that cost the borrower five or ten percent; is that correct?

A To my knowledge, I don't know of any, no.

Q Now, in connection with either the Pacific Bridge Company application and the application of Mr. Riel and Lewis, or any application which Mr. Kovens may have made for a Fund loan, have you ever discussed with anyone the fact or the possibility that these loans might cost approximately ten percent or more rather than one or two percent?

A I have never discussed that, no.

* * *

Q Now, in connection with the Pacific Bridge Company application, did you ever suggest or propose to any representative of Pacific Bridge Company that they make any loan or payment to any entity other than the brokerage fee which you have described to us of two percent and the appraisal and standby fee?

A Never."

[Transcript page 47, line 5 to page 48, lines 1 - 12 and 18 - 24]

* * *

Now, as best you recall, was an amount of money discussed which might be loaned by Pacific Bridge Company and Associates to your computer statistical venture that morning in the hotel room prior to the Pension Fund meeting?

We had always talked about it so vaguely as to an amount. I asked them, I said, 'I would like

to get four people to put up about sixty, sixty-five thousand dollars.' That was the figure I had in mind. So I suppose we discussed that particular figure.

Q All right, sir. Did you discuss any figure in terms of a percentage of the Pension Fund loan; that is, did you tell them that they would have to pay eight percent or ten percent of whatever amount was loaned to them by the Pension Fund as a loan to your computer statistical company?

A No. Absolutely not.

Q And your recollection is clear on that?

A Oh, very definitely. There is absolutely no relationship between the monies we were talking about and what the loan consequently was."

[Transcript page 53, line 16 to page 54, line 9].

And such testimony was false and contrary to the oath taken by NORMAN TYRONE as he then well knew and believed that he had discussed with representatives of Pacific Bridge Company and Associates that Teamster Pension Fund loans cost ten percent or [illegible] and that the money which might be loaned to the computer statistical company was discussed in relation to the percentage which had to be paid for a Pension Fund loan.

All in violation of Title 18, United States Code, Section 1621.

[18 USC 1621]

That prior and subsequent to March 25, 1970 there was pending before a competent tribunal, that is a Grand Jury duly empanelled and sworn by a District Court of the United States, a case in which the laws of the United States authorized an oath to be administered, that is an investigation of possible violations of federal law in connection with the development of the Sierra-Tahoe Hotel and Casino, Lake Tahoe, Nevada, during the years 1964 through 1966, including possible mail and interstate wire fraud upon the Central States, Southeast and Southwest Areas Pension Fund of the Teamsters' Union, Chicago, Illinois; prohibited payments or demands for prohibited payments to representatives of that Pension Fund to influence their action with respect to the granting of loans by said Fund; the causing of false records to be prepared and maintained by said Fund; and conspiracy to commit the above offenses during the years 1964 through 1966.

Further that on March 25, 1970 at Reno in the District of Nevada the defendant NORMAN TYRONE, having taken an oath to testify truly before that Grand Jury, did willfully and contrary to his oath state material matter which he did not believe to be true, in that in answer to questions by government counsel he testified as follows:

"Q I see. Was there any arrangement for any other fees or payments to be made by Pacific Bridge Company in connection with the securing of the Pension Fund loan, other than the two percent commission that you have indicated?

A No.

This may be helpful to you, so I am going to volunteer this. At that time I was trying to put together a mortgage computer company which

would file data and supply applicants companies who were in the business of their particular loans. The executive vice-president told me that with this money, Pacific Bridge could have some surplus funds; and they thought they might like to buy into the thing.

And I discussed the possibility of their buying, I think it was 50 or 60 thousand dollars' worth of debentures, which they would be repaid at sometime down the line.

But this was not in any way a condition of this loan. This was totally a side business, having nothing to do with the Pension Fund."

[Transcript page 9, line 17 to page 10, line 9]

* * *

"Q Do you recall whether it was yourself or the executive vice-president with the Pacific Bridge Company who suggested the possibility of an investment in the mortgage computer service?

A Well, there wasn't any real formal kind of an affair. He just said that he thought it was a good idea; and if they did this, he thought maybe they would do something about it.

But I want--in fact, one of the things I am very mad at them about is that they tried to accuse me of making this a part of this deal, which was approved without anything of that nature. And in fact it was an embarrassing thing.

So definitely, there was no tie to the two situations.

Q. I see. So you did not discuss with any representative of Pacific Bridge Company and Associates the possibility or the fact that the granting of this

loan would be dependent upon such an investment?

A No. No."

[Transcript page 11, line 15 to page 12, line 7]

* * *

Q All right, sir. Now, during the discussion that you had with Mr. Farella, the attorney, and Mr. Swiegert, the president of Pacific Bridge Company, in your hotel room the morning before you went to the Pension Fund, did you at any time tell them that the making of a loan by Pacific Bridge Company to your computer statistical venture was a condition of their securing the Teamsters Pension Fund loan?

A Not in any way whatsoever."

[Transcript page 51, line 25 to page 52, line 7]

And such testimony was false and contrary to the oath taken by NORMAN TYRONE as he then well knew and believed that the loan or investment in a mortgage computer service which he discussed with representatives of Pacific Bridge Company and Associates was discussed as a condition of securing a loan from the Pension Fund, upon which the granting of the Pension Fund loan would be dependent; and that this was not ". . . a side business, having nothing to do with the Pension Fund."

All in violation of Title 18, United States Code, Section 1621.

COUNT THREE

[18 USC 1621]

That prior and subsequent to March 25, 1970 there was pending before a competent tribunal, that is a Grand Jury duly empanelled and sworn by a District Court of the United States, a case in which the laws of the United States authorized an oath to be administered, that is an investigation of possible violations of federal law in connection with the development of the Sierra-Tahoe Hotel and Casino, Lake Tahoe, Nevada, during the years 1964 through 1966, including possible mail or interstate wire fraud upon the Central States, Southeast and Southwest Areas Pension Fund of the Teamsters' Union, Chicago, Illinois; prohibited payments or demands for prohibited payments to representatives of that Pension Fund to influence their action with respect to the granting of loans by said Fund; the causing of false records to be prepared and maintained by said Fund; and conspiracy to commit the above offenses during the years 1964 through 1966.

Further that on March 25, 1970 at Reno in the District of Nevada the defendant NORMAN TYRONE, having taken an oath to testify truly before that Grand Jury, did willfully and contrary to his oath state material matter which he did not believe to be true, in that in answer to questions by government counsel he testified as follows:

"Q Now, at the time of the conversation in the hotel room with Mr. Swiegert and Farella the morning of the Pension Fund application, did you have prepared any documents relating to a proposed loan or investment in the computer statistical venture?

A I did not have any documents prepared; other than as I said, I had made up a little sheet explaining what we proposed to do.

Q Did either of those gentlemen have any documents

with them relating to a loan from Pacific Bridge Company and Associates to your computer statistical venture?

A None that I recall.

Q Did anyone at that time have in their possession, or discuss the preparation of a letter of commitment from Pacific Bridge Company to your computer statistical venture?

A Well, understand, I firmly believe in this situation. And I was trying, certainly, hard to get them to commit themselves that they would like to either come into it or not. But it would be so far afield to say that that was a condition or a tie-in. It just happened to be in the first oppprtunity we had to get together to discuss the matter. And as I say, we discussed it awhile and then we had to hurry up to get over to the trustees, so the matter was dropped, the conversation wasn't even concluded.

Q I understand the--

MR. KING: The question was: Did you have a letter of commitment prepared at the time you met with those gentlemen that morning?

THE WITNESS: I am sure I didn't, because I don't ever remember making a letter of commitment for them. The answer would be no."

[Transcript page 59, line 21 to page 61, line 1]

* * *

"BY MR. SOURWINE:

Q When Mr. Swiegert and his lawyer arrived at your hotel suite that morning, Mr. Tyrone, did they bring with them the application forms that had been filled in by Pacific Bridge?

A No. I had the application form with me at that time. We changed a copy. The original was with the Fund. And we changed a copy and signed it and initialed the copy.

Q So you handed a copy of the application to Mr. Swiegert or to his lawyer?

A Yes.

Q And changes were made and initialed?

A Correct.

Q Did you hand them any other documents?

A Not that I recall, no. I know that I didn't.

BY MR. DE FEO:

Q Mr. Tyrone, to be very precise in our question--and I am sure I have explained to you previously our interest in this matter--at the meeting in the hotel room the morning before the trustees meeting, did you present to Mr. Swiegert or Mr. Farella a letter of commitment from their company to your computer statistical venture for a stated sum of money?

A I did not."

[Transcript page 66, lines 2 to 24]

And such testimony was false and contrary to the oath taken by NORMAN TYRONE as he then well knew and believed that at the time of the conversation described he did have prepared and in his possession and did present to William Swigert or Frank Farella a letter of commitment from Pacific Bridge Company and Associates to the computer statistical venture for a sum of money.

All in violation of Title 18, United States Code, Section 1621.

FPI-LPC-8-67-100M-3184

A TRUE BILL:

FOREMAN

BART M. SCHOUWEILER
United States Attorney

By:
JULIEN G. SOURWINE
Asst. United States Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

Sandra Alward, being first duly sworn, says: that affiant whose address is 9050 Telegraph Road, Downey, California, is a citizen of the United States, a resident of the county where the herein described mailing took place; over the age of 18 years and not a party to the within action. The affiant served the attached PETITION FOR WRIT OF CERTIORARI on the Respondent in said action by placing a true copy thereon in a sealed envelope and on the 28th day of January, 1972, deposited said envelope in the United States mail at 9050 Telegraph Road, Downey, California with air mail postage fully prepaid thereon, there being a regular communication by mail between the place of mailing and the place so addressed, addressed as follows:

Solicitor General,
Department of Justice
Whashington D.C. 20530

Sandra Alward
SANDRA ALWARD

Subscribed and sworn to before me this 28th day of January, 1972

Marilyn Swinford
Notary Public in and for said
County and State

OFFICIAL SEAL
MARILYN SWINFORD
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires September 19, 1975

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No. 71-973

In the Supreme Court of the United States

OCTOBER TERM, 1971

NORMAN TYRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-976

NORMAN TYRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial without a jury in the United States District Court for the District of Nevada, petitioner was convicted on two counts of a three-count indictment charging him with perjury in his testimony before a grand jury, in violation of 18 U.S.C. 1621. On February 26, 1971, the court ordered him to pay a fine of $2,000 on each count, and placed him on probation for three years. The court of appeals affirmed (Pet. App. A).

Petitioner, a mortgage broker, had assisted the Pacific Bridge Company to obtain a loan from the Teamsters union pension fund to finance the construction of a resort hotel and casino at Lake Tahoe (Pet. App. A, at p. 19). When petitioner appeared before a grand jury investigating possible mail and wire fraud

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and possible prohibited payments to the trustees of the fund, he was advised of the nature of the inquiry and the grand jury's interest in this particular project. (G.J. 4–7).[1] Count one of the indictment in this case alleged that, while under oath, petitioner falsely testified that he had not discussed with anyone, in connection with the Pacific Bridge Company application, that the cost of a loan from the pension fund would be approximately 10 per cent. Count two charged that petitioner falsely denied that a loan by the Pacific Bridge Company and associates to a mortgage computer service, which petitioner planned to organize, was a condition to his securing the loan from the pension fund.

At trial, the government's evidence showed that shortly before the pension fund trustees passed on the loan application petitioner told two representatives of Pacific Bridge (1) that the cost of getting any loan from the pension fund was approximately 10 per cent and (2) that, in order to get approval of the loan, the Company would have to invest a substantial sum in a Bahama based company that petitioner was thinking about organizing (Tr. 187–196; 307–309).

1. The evidence here fully meets the requirements of the "two-witness rule." *Weiler* v. *United States*, 323 U.S. 606. Both representatives of Pacific Bridge Company, the loan applicant, gave testimony completely at variance with petitioner's grand jury testimony. In addition, a former officer of the Com-

[1] "G.J." refers to the grand jury minutes and "Tr." refers to the trial transcript, both of which we are lodging with the Court.

pany corroborated this testimony by stating that petitioner, when first consulted about the Teamster loan, suggested that the Company invest in the proposed corporation in the Bahamas. (Tr. 124–126.)[2]

2. The indictment, which set forth *in haec verba* petitioner's testimony before the grand jury (Pet. App. C), clearly apprised him of the charges he had to meet. *Hagner* v. *United States*, 285 U.S. 427, 431.[3]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1972.

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[2] Petitioner also contends that his failure to renew his motion for judgment of acquittal at the close of all the evidence did not constitute a waiver of his earlier motion (Pet. 12–15). But the court below did not base its ruling on any waiver theory; the court held instead that there was no substance to the claim that the evidence was insufficient to sustain petitioner's conviction (Pet. App. A 21–22).

[3] Contrary to petitioner's assertion, he did not previously challenge the sufficiency of the indictment. In the trial court he contended only that the three counts should be consolidated; on appeal he argued that dismissal of count 3 required dismissal of the remaining counts. (The district court dismissed count 3 at the close of the government's evidence (Pet. App. A, at p. 20 n. 1).)

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